

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**BETTY DIANE CARROLL,
Plaintiff,**

v.

**C-CON SERVICES, INC., and
EARL B. COTTON,
Defendants.**

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CIVIL ACTION NO. 4:21-cv-00327

**DEFENDANT C-CON SERVICES, INC., and EARL B. COTTON'S
REPOSE IN OPPOSITION AND MOTION TO STRIKE PLAINTIFF'S MOTION
FOR AN AWARD OF ATTORNEYS FEES**

NOW COME, Defendants, **C-CON SERVICES, INC.**, and **EARL B. COTTON**, and file this Response in Opposition to the Motion for an award of Attorneys Fees and costs filed by Plaintiff, Betty Diane Carroll, objecting to the filing of same and moving to strike, and in the alternative, requesting Leave to conduct additional discovery in order to fully respond to Plaintiff's Motion for Attorneys Fees, as well as a continuance and scheduling order for an evidentiary hearing, and for such would show:

1.1 in September of 2022, this case was tried to a jury for over one week. Upon the closing of the case the jury returned a verdict nominally in Plaintiff's favor and assessed damages at a fraction of what the Plaintiff had requested.

1.2 Thereafter, the Court allowed the parties to submit posttrial motions, responses, and briefs. In October of 2022 Plaintiff filed two motions, one seeking liquidated damages and front pay, and one challenging the verdict and asking the Court to award her all the damages she sought at trial. Defendants filed responses to the motions and Plaintiff filed reply briefs.

1.3 Eleven months later, the Court rendered its final judgment in the case. For the most part the Court followed the jury's verdict and the damages they awarded and also awarded a small

amount of liquidated damages. The Final Judgment, issued on September 6, 2023, states that “all relief not specifically granted herein is DENIED. This is a Final Judgment which disposes of all claims and causes of action and is appealable.”

1.4 Thereafter the Plaintiff filed her motion for an award of attorneys fees and costs, on September 20, 2023. Despite the fact that the Court had signed a final judgment in the case and denied any further relief, Plaintiff filed her motion and attached documents and proposed evidence that were never disclosed, never offered, and never admitted at trial. In addition, she attached objectionable opinion evidence of an expert never disclosed at any time prior to inclusion of the statement from said expert.

1.5 Finally, Plaintiff filed her motion after sending a vague email to Defendants’ counsel asking if they were opposed the motion. The Plaintiff never provided a copy of the motion or any details of its contents prior to filing it.

1.6 While the parties had discussed during the trial that a claim for attorneys fees could be tried to the Court, Plaintiff made no attempt after the verdict to file a motion to have an evidentiary hearing on the question of attorneys fees. The Court waited almost a year, and when Plaintiff failed to ever raise the question of trying the attorneys fees claims, decided to issue its final Judgment, and denied any attorneys fees.

1.7 As such, Defendants request that the Court strike the motion for attorneys fees. However, in the alternative, if the Court intends to entertain the merits of Plaintiff’s motion, Defendants ask the Court allow Defendants the time and opportunity to gather evidence, file additional objections to evidence and to set for evidentiary hearing, Plaintiff’s request for attorneys fees.

Respectfully submitted,

CUTLER ■ SMITH, P.C.

By: /s/ Cynthia Karm
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was served on all counsel of record via the court's electronic filing system pursuant to the Federal Rules of Civil Procedure on this 11th day of October, 2022.

By: /s/ Darrell W. Smith
Attorney Certifying